

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHER DISTRICT OF TEXAS
DALLAS DIVISION**

NELSON JOHNSON,

Plaintiff,

v.

WAFFLE HOUSE, INC.,

Defendant.

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CIVIL ACTION NO. _____

DEFENDANT’S NOTICE OF REMOVAL

Defendant Waffle House, Inc., files its Notice of Removal in accordance with 28 U.S.C. §§ 1332(a) and 1446 (a), (b), (c) and (d), and hereby remove to this Court the action styled *Nelson Johnson v. Waffle House, Inc.*, Cause No. DC-21-04121, previously filed in the 101st Judicial District Court, Dallas County, Texas, to this Court pursuant to the Court’s original jurisdiction as provided by 28 U.S.C. § 1332. In compliance with 28 U.S.C. § 1446(a), Defendant asserts the following grounds for removal:

I. STATE COURT ACTION

1. On March 31, 2021, a civil action was commenced in the 101st District Court of Dallas County entitled *Nelson Johnson v. Waffle House, Inc.*, Cause No. DC-21-04121. True and correct copies of the pleadings in the state action, including Plaintiff’s Petition and Defendant’s Answer, are contained in the accompanying Appendix. App. at A, pp. 1-34.

II. PARTIES & SERVICE

2. The state action pleadings included in Defendant’s Appendix constitute all process, pleadings, and orders served upon Defendant in the state action to date and filed in the state court action. App. at A. pp. 1-34.

3. Waffle House, the sole defendant, was served with process on July 20, 2021. App. at A, p. 24. Therefore, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b).

III. VENUE

4. Venue of the removed action is proper in this Court as it is the district and division embracing the place where the state action is pending in Dallas County, Texas pursuant to 28 U.S.C. § 1446(a).

IV. PROCEDURAL HISTORY

5. This Notice of Removal is timely under 28 U.S.C. § 1446(b). It is being filed within thirty (30) days after acceptance of service of summons and complaint by Defendant, a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty (30) days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant.

6. As required by 28 U.S.C. § 1446(a), all process, pleadings, and orders received by Defendant in the state court action are included in Defendant's Appendix. App. at A, pp. 1-34.

7. As required by 28 U.S.C. § 1446(d), undersigned counsel certifies that written notice of the filing of this Notice of Removal will be given promptly to all parties and will be filed promptly with the clerk of the Dallas County District Court.

V. DIVERSITY JURISDICTION

8. Removal under 28 U.S.C. § 1441 is appropriate because this case is an action over which this Court would have original jurisdiction pursuant to 28 U.S.C. § 1332. Specifically, the amount in controversy exceeds \$75,000, exclusive of interest and costs, and complete diversity of citizenship exists between Plaintiff and Defendant pursuant to 28 U.S.C. §§ 1332 & 1441.

9. Defendant, Waffle House, Inc., is a corporation incorporated under the laws of the State of Georgia, with its principal place of business in the State of Georgia. This has been true at all times since the date of the alleged accident in question in this lawsuit. App. at B, p. 35; C, p. 36; D, pp. 37-38; and E, pp. 39-41. Therefore, for the purposes of diversity jurisdiction, Defendant is a citizen of the State of Georgia. 27 U.S.C. § 1332(c).

10. Plaintiff is an individual who is currently a resident of Dallas County, Texas and citizen and resident of the State of Texas. App. at A, p. 4.

11. Because Plaintiff has been at all relevant times and still is a citizen of the State of Texas and the sole Defendant has been at all relevant times and still is a citizen of the State of Georgia, there is complete diversity of citizenship as between plaintiffs and defendant. 28 U.S.C. § 1332 (a) and (c).

12. Regarding the amount in controversy, Plaintiff seeks damages for back pay, front pay, mental anguish, and attorney's fees, among others, and expressly seeks "monetary relief over \$100,000." App. at A, p. 4. The amount in controversy therefore exceeds \$75,000.

13. Accordingly, this action may be removed from the District Court of Dallas County, Texas, and brought before the U.S. District Court for the Northern District of Texas, Dallas Division, pursuant to 28 U.S.C. §§ 1332(a)(1), and 1441(a), (b), and (d).

14. By removing this matter, Defendant do not waive, and expressly preserve, any and all defenses they may have and the ability to compel arbitration should Plaintiff not voluntarily agree to arbitrate pursuant to the Parties' agreement to arbitrate disputes.

VI. NOTICE TO STATE COURT

15. Defendant, the removing party, will promptly give Plaintiff written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d). Defendant will also promptly

file a copy of this Notice of Removal with the Clerk of the Dallas County District Court where the state action is currently pending.

VII. COUNSEL OF RECORD

16. The following is a list of all counsel of record:

William E. Hammel
Texas Bar No. 24036714
bhammel@foxrothschild.com
Fox Rothschild LLP
2501 N Harwood Street, Suite 1800
Dallas, Texas 75201
PH: (213) 231-5787
Counsel for Defendant

Timothy E. Baker
Texas Bar No. 24050247
1205 S. Greenville Ave.
Allen, TX 75002
PH: (214) 727-4956
EM: tbaker@timbakerlaw.com
Counsel for Plaintiff

VIII. PRAYER

17. WHEREFORE, Defendant removes the case styled *Nelson Johnson v. Waffle House, Inc.*, Cause No. DC-21-04121, from the 101st District Court of Dallas County, Texas to this Court.

Respectfully submitted,

/s/ William E. Hammel
William E. Hammel
Texas Bar No. 24036714
Fox Rothschild, LLP
2501 N Harwood Street, Suite 1800
Dallas, TX 75201
PH: (213) 231-5787
EM: bhammel@foxrothschild.com
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that Defendant's Notice of Removal was served on the following counsel of record, via email and the PACER ECF notification system, on this 19th day of August 2021:

Timothy E. Baker
1205 S. Greenville Ave.
Allen, TX 75002
PH: (214) 727-4956
EM: tbaker@timbakerlaw.com
Counsel for Plaintiff

/s/ William E. Hammel
William E. Hammel